



## The Attorney General of Texas

April 11, 1984

JIM MATTOX  
Attorney General

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711-2548  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

Mr. Gray Chamberlain  
Chief Appraiser  
Ellis County Tax Appraisal District  
P. O. Box 878  
Waxahachie, Texas 75165

Open Records Decision No. 410

Re: Whether tapes of hearings  
of an appraisal review board  
are excepted from disclosure

714 Jackson, Suite 700  
Dallas, TX. 75202-4506  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905-2793  
915/533-3484

1001 Texas, Suite 700  
Houston, TX. 77002-3111  
713/223-5886

806 Broadway, Suite 312  
Lubbock, TX. 79401-3479  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501-1685  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205-2797  
512/225-4191

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Dear Mr. Chamberlain:

You ask for our decision as to whether copies of tapes of the Ellis County Appraisal Review Board hearings for the year 1982 are available to the public under the Open Records Act, article 6252-17a, V.T.C.S. You inform us that a school district has filed a lawsuit against the Ellis County Appraisal District and the Ellis County Appraisal Review Board. You further inform us that this same school district has also filed what purports to be a notice of intent to sue on other matters involving the 1982 appraisal roll. You have not submitted for our inspection the tapes themselves, but rather the minutes of the board hearings which reflect the content of the actual tapes.

You assert that the requested tapes are excepted from required public disclosure by section 3(a)(3) of the Open Records Act, which excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection. . . .

We agree and conclude that the materials are excepted from public disclosure.

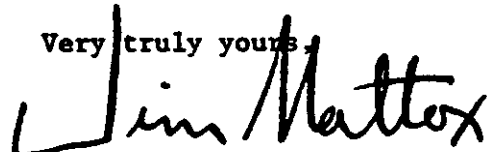
This office has repeatedly held that the mere chance of litigation will not trigger section 3(a)(3); it is applicable only when litigation is pending or is reasonably anticipated in regard to a

specific matter. Open Records Decision Nos. 331, 328, 326 (1982). Moreover, information for which section 3(a)(3) is claimed must be clearly relevant to the pending litigation. Open Records Decision No. 323 (1982). This office has also held that section 3(a)(3) is not applicable in instances in which disclosure would not adversely affect the interest of the governmental body. Open Records Decision Nos. 180 (1977); 138 (1976). The attorney representing the governmental body must make a determination that information falling within the ambit of section 3(a)(3) should be withheld from disclosure and that the information must be relevant to the litigation in order that the requested information be excepted. Open Records Decision Nos. 282, 281, 280 (1981).

In this instance, a lawsuit has actually been filed. The lawsuit alleges that the appraisal district and the appraisal review board erred inter alia by excluding certain properties from the appraisal roll and by incorrectly valuing many properties so included. Both the petition filed with the Ellis County Appraisal Review Board and the pleadings filed in connection with the lawsuit list specific properties located within the jurisdiction of the school district which filed the lawsuit. Each of the tapes requested contains the appraisal review board hearings on one or more of these subject properties.

There can be no question that the information requested is clearly relevant to the pending litigation; the factual disputes involved in the litigation center on these materials. The attorney representing the appraisal district and the appraisal review board have demonstrated to our satisfaction that the release of these materials will compromise the defendant's position in the ensuing litigation. We agree with the finding made by district's and board's attorney and conclude that the requested tapes are excepted from disclosure.

Very truly yours,



JIM MATTOX

Attorney General of Texas

TOM GREEN  
First Assistant Attorney General

DAVID R. RICHARDS  
Executive Assistant Attorney General

Prepared by Jim Moellinger  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Rick Gilpin, Chairman  
Jon Bible  
Jim Moellinger  
Nancy Sutton  
Bruce Youngblood